IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14642 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHIKHESHKUMAR RAMDAS SADHU

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14642 of 2003

MRS KETTY A MEHTA for Petitioner No. 1-2

MR PRADIP BHATE A.G.P. for Respondent No. 1-2

RULE SERVED for Respondent No. 1-3

MR PP PUROHIT for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/04/2004

ORAL JUDGEMENT

In this petition, the petitioners have challenged

their placement in the lower payscale than the existing one by the respondents by virtue of Resolution dated 15th December, 1987.

1.1. The petitioners were initially appointed in the scheme known as Sarvoday Scheme. Petitioner no. 1 was appointed as Upsanchalak vide order dated 24th October, 1979 and he was posted in the Sabarkantha District at village Lambadiya. Petitioner No. 2 was appointed under the said Scheme as Accountant and he was posted at Indhrad in Mahesana District. Both of them were placed in the pre-revised payscale of Rs.300-560/-. The Scheme was being administered by respondent no.1 - State Government.

1.2. By Resolution dated 18th July, 1980 respondent no.1 decided to abolish the Scheme and the said Resolution came to be challenged by the Sanchalaks of Sarvoday Centres at various placed and also by the employees working under the said Scheme. However, through their association, the present petitioners were also party, filed Special Civil Application No.4246 of 1983 before this Court. In the proceedings of the said petition respondent no.1 gave assurance before this Court that all the employees working under the Scheme would be duly absorbed in the Panchayat service in the existing payscale. In view of the said assurance, the said petition was withdrawn by the association.

1.3. Vide Resolution dated 30th July, 1981, respondent no.1 declared that those employees who were working full time under the Scheme and who had completed one years service under the said Scheme as on 31st March, 1981 would be absorbed in the ex-cadre post under the Panchayat in their existing payscales as the existing salary and allowance with effect from 1981. In view of the said Resolution, petitioner no.1 was absorbed in service under the Sabarkantha District Panchayat, and was posted as ex-cadre employee in Taluka Panchayat at Khedbhrahma vide order dated 1st September, 1981 and petitioner no.2 was absorbed in Mahesana District Panchayat and was posted as ex-cadre employee in General Branch of the Mahesana District Panchayat by order dated 31st August, 1989. Subsequently, petitioner no. 1 was appointed in the office of Development Commissioner as ex-cadre employee vide order dated 21st January, 1986. By order dated 24th April, 1986, petitioner no. 2 also was appointed by the Development Commissioner on the ex-cadre post. Even at the time the Development Commissioner passed order, the payscale of petitioners remain at Rs.300-560/-.

1.4. In the meanwhile, another petition was filed by the Association of the ex-cadre Sarvoday Employees being Special Civil Application No. 4246 of 1983. The petitioners were the members of this association also. On 6th December, 1986, the Government of Gujarat wrote letter to the President of the Association informing him that the Government had already taken decision to obsorb the ex-cadre employees in the Panchayat service and to give them benefits which were being given to other Panchayat employees. However, on this condition, the petition was withdrawn by the association.

1.5. Subsequently, the petitioner came to be placed in the payscale of Rs.950-1500 in view of the Resolution dated 15th December, 1987. The pre-revised scale of the said payscale was Rs.260-400/-. The petitioners grievance is that they were working in the payscale of Rs.300-560/- and the corresponding revised payscale was Rs.1200-2040/-. According to them, the Government ought to have continued their existing payscale, but instead they have been wrongly placed in lower payscale. Since their request was not acceded to, the petitioners have approached this Court by way of this Special Civil Application.

2. Mrs. Ketty A. Mehta learned advocate appearing for the petitioners has submitted that the respondents have acted against the assurance given to the ex-cadre employees of the Scheme, since they were to be given their existing payscale, but instead they have been lowered down to payscale of Rs.260-400/- which is corresponding to Rs.950-1500. According to her, this amounts to wrongful reversion. She has further submitted that the decision has been taken by virtue of the Resolution dated 15th December, 1987. The said Resolution however, has been challenged time and again before this Court in the petitions filed by erstwhile employees of the Scheme and, therefore, according to her, the issue involved in this petition, is already decided in favour of the petitioners. She has placed reliance on several decisions some of which have been annexed to this petition.

2.1. As against that the say of the respondents as can be seen from the affidavit-in-reply filed by respondent no. 3 is that the petitioners had given an undertaking to the effect that they would accept whatever post they would be given. They now cannot turn around and challenge the decision of the respondents. Mr.P.P. Purohit learned advocate appearing for respondent no. 3

has reiterated the same submissions as contained in affidavit-in-reply filed on behalf of respondent no. 3. Mr. Pradip Bhate learned A.G.P. appearing for respondents nos. 1 and 2 has also made identical submissions with regard to the undertaking given by the petitioners.

3. Having gone through the record of this petition and the decisions which have been relied on by the petitioners, it clearly appears that the petitioners who were the former employees of the Scheme administered by the State Government, alongwith others were given assurance to the effect that they would be absorbed in the Panchayat service on their existing payscales. This was done in light of the petitions that were filed before this Court earlier. It was also assured to the petitioners and petitioning association of the ex-cadre employees under the Scheme that the employees would be treated as employees of the Panchayat and would be given all the benefits which have been made available to the employees of the Panchayat. Despite such assurance having been given to them, the said employees were almost compelled to give an undertaking in terms of Resolution dated 15th December, 1987 and in particular paragraphs 4 and 5 thereof. The terms stated in the said paragraphs are with regard to absorption of the petitioners on the post having lower payscale.

3.1. In relation to the controversy created by the Resolution dated 15th December, 1987, petition was filed before this Court being Special Civil Application No.6912 of 1987. In that case, the petitioner was appointed as Education Inspector by Administrator of Sarvodaya Scheme, Central Office, Ahmedabad in the payscale of Rs.425-800/- namely 1400-2600/-. He, therefore, approached this Court making a grievance regarding injustice done to him. This Court (Coram : Kundan Singh, J.) vide decision dated 18th November, 1998, allowed the petition and struck down the Government Resolution dated 15th December, 1987, by observing as under :-

> "Accordingly, the petition is allowed and clause (4) of the Government Resolution dated 15th December, 1987, whereby the petitioner has been reverted to a lower post of clerk-cum-typist is struck down and the respondents are directed to treat the petitioner as an Education Inspector from the date 15th December, 1987 and to give all consequential benefits and also to treat the petitioner at par with the Educational Inspector who are working in the Panchayat. The

respondents are further directed to make necessary arrangement for payment of arrears of pay and allowances admissible under the Rules, within a period of three months. Rule is made absolute accordingly, with no order as to costs."

3.2. While doing so, the learned Judge held action of the respondents arbitrary and not sustainable in law.

3.3. Placing reliance on the said judgment, another learned Single Judge of this Court (Coram : B. J. Shethna, J.) vide decision dated 11th January, 2002 rendered in Special Civil Application No.1295 of 1989 and its cognate matters, put reliance on the same judgment and gave certain direction, that petitioners of those petitions to be treated as Chief Head Worker and Assistant Worker or its equivalent and directed the respondents to pay all the incidental monetary benefits to them. Mrs. Mehta has also placed reliance on the decisions of the learned Single Judge of this Court (Coram : C. K. Buch, J. and P.B. Majmudar, J.) rendered in Special Civil Application No. 1696 of 1996 and its cognate matters dated 16th October, 2001 and in Special Civil Application No. 6820 of 2001, dated 7th August, 2002, respectively. Ofcourse, in those petitions, the controversy with regard to not counting service rendered in the Scheme for Panchayat service was involved. However, this Court allowed the petitions and directed the respondents that such service should also be taken on the record. Thus, this Court has consistently taken view to the effect that the respondents could not compel the ex-cadre employees under the Scheme on the basis of the undertaking which was obtained from them in accordance with the term of the Resolution dated 15th December, 1987. If that be so, in the present case also, the stand taken by the respondents with regard to the undertaking given by the petitioners cannot be accepted. When the petitioners have been put in disadvantageous position, it was absolutely, unjust, improper on the part of the respondents to extract an undertaking from them. When, a person is placed with difficult situation of losing his job, he will accede to any request or terms or conditions suggested by his mighty employer like the State Government. Such attitude has been criticized by the Apex Court time and again. In that view of the matter, the submission made on behalf of the respondents by Mr. Purohit and Mr. Bhate cannot be accepted. It is obvious that the petitioners have been done injustice and that is required to be redressed by this Court.

In view of the aforesaid, this petition is

allowed. The respondents are directed to place them in their existing payscale of Rs.300-560/- which presently corresponds to Rs.4000-6000/- together with continuity of service for the purpose of all the benefits. The respondents are also directed to pay to the petitioners all the arrears on or before 31st July, 2004.

With this direction, the impugned orders are quashed and set aside. This petition is allowed. Rule is made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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